

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CRAIG CHAQUICO,

Plaintiff,

v.

DAVID FREIBERG, et al.,

Defendants.

Case No. [17-cv-02423-MEJ](#)

**ORDER DENYING MOTION TO  
AMEND WITHOUT PREJUDICE**

Re: Dkt. No. 90

Pending before the Court is Plaintiff Craig Chaquico's Motion for Leave to File an Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a), filed on July 17, 2018. Dkt. No. 90. However, on April 11, 2018, the Court issued a Case Management Order, establishing June 1, 2018 as the deadline to seek leave to amend pleadings. Dkt. Nos. 61, 70. "Where, as here, the motion to amend is presented after the Court has entered a pretrial scheduling order, the liberal rules governing motions to amend under Rule 15(a) are inapplicable." *Osakan v. Apple Am. Grp.*, 2010 WL 1838701, at \*3 (N.D. Cal. May 5, 2010) (citing *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir.2000)). Instead, a motion to amend is to be analyzed under Rule 16(b)(4), which requires the movant to demonstrate "good cause" for allowing the amendment. *Id.* "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment." *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (9th Cir. 1992). "Although the existence or degree of prejudice to the party opposing the modification might supply additional reasons to deny a motion, the focus of the inquiry is upon the moving party's reasons for seeking modification . . . . If that party was not diligent, the inquiry should end." *Id.*; *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (affirming denial of motion to modify pretrial schedule where plaintiff failed to "demonstrate diligence in complying with the dates set by the district court"). If, however, the plaintiff demonstrates good cause under

1 Rule 16(b), he must then establish that the proposed amendment is permissible under the factors  
2 germane to Rule 15. *Johnson*, 975 F.2d at 609.

3 In his motion, Plaintiff states that he seeks to add Grace Slick Johnson and Jefferson  
4 Starship, Inc. as necessary defendants because “discovery in this case revealed that Slick and  
5 [Jefferson Starship, Inc.], via a Licensing Agreement dated March 21, 2016, with Defendants  
6 Donny Baldwin, David Freiberg and Cathy Richardson purported to grant them the right to use the  
7 mark Jefferson Starship, the right to tour, perform as the band Jefferson Starship and use the mark  
8 in connection with merchandise offered at its concerts and through its website in direct violation  
9 of the March 21, 1985 Agreement.” Mot. at 3. Plaintiff does not state when this agreement was  
10 produced, nor does he otherwise address his diligence and why he could not bring this motion  
11 before the June 1 deadline. Instead, Plaintiff focuses on the joinder requirements of Federal Rule  
12 of Civil Procedure 19.

13 Because Plaintiff has failed to address the good cause requirement under Rule 16(b), the  
14 Court **DENIES** his Motion to Amend **WITHOUT PREJUDICE**. Plaintiff may file a revised  
15 motion that addresses Rules 15, 16, and 19. At the same time, the Court is mindful of the  
16 Supreme Court’s directive that “[i]f the underlying facts or circumstances relied upon by a plaintiff  
17 may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the  
18 merits.” *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Given the argument raised in Plaintiff’s  
19 motion, it is likely that amendment should be permitted. Thus, in order to avoid potentially  
20 unnecessary litigation, the Court **ORDERS** the parties to meet and confer by August 2, 2018, to  
21 determine whether Defendants will agree to allow Plaintiff to file his proposed Third Amended  
22 Complaint. If so, the parties shall file a stipulation requesting that the Court permit him to file the  
23 amended complaint; if not, Plaintiff shall file a revised motion pursuant to Civil Local Rule 7.

24 **IT IS SO ORDERED.**

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26 Dated: July 26, 2018

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MARIA-ELENA JAMES  
United States Magistrate Judge